

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AG. G. a minor, by and through his guardian ad litem, JESSICA AQUINO; AR. G., a minor, by and through his guardian ad litem, JESSICA AQUINO; KARLA GONSALEZ, individually; and AUGUSTIN GONZALES JR., individually;

Plaintiffs,

vs.

CITY OF HAYWARD, a municipal corporation; MARK KOLLER, individually; PHILLIP WOOLEY, individually; MICHAEL CLARK, individually; TASHA DECOSTA, individually; and DOES 1-100, inclusive,

Defendants.

Case No. 4:19-cv-00697 DMR

**DECLARATION OF BENJAMIN  
NISENBAUM IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

**Date: July 9, 2020  
Time: 1:00 p.m.  
Courtroom: 4**

**Hon. Donna M. Ryu**

**EXHIBIT B**

DEPOSITION OF OFFICER PHILLIP WOOLEY

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

AG.G. a minor, by and through )  
his guardian ad litem, JESSICA )  
AQUINO; AR.G., a minor, by and )  
through his guardian ad litem, )  
JESSICA AQUINO; KARLA GONSALEZ )  
individually; and AUGUSTIN )  
GONSALEZ, JR., individually, )

Plaintiffs, )

vs. )

CASE NO.: 4:19-cv-00697 DMR

CITY OF HAYWARD, a municipal )  
corporation; MARK KOLLER, )  
individually; PHILLIP WOOLEY, )  
individually; MICHAEL CLARK, )  
individually; TASHA DECOSTA, )  
individually; and DOES 1-100, )  
inclusive, )

Defendants. )

CERTIFIED COPY

DEPOSITION OF OFFICER PHILLIP WOOLEY

TUESDAY, MARCH 24, 2020

REPORTED BY: LISA M. BOSCHETTI-MAURINO, CSR #9389

DEPOSITION OF OFFICER PHILLIP WOOLEY

DEPOSITION OF OFFICER PHILLIP WOOLEY

BE IT REMEMBERED that on Tuesday, March 24th, 2020, commencing at the hour of 10:00 a.m. thereof, at the LAW OFFICES OF JOHN L. BURRIS, 7677 Oakport Street, Suite 1120, Oakland, California 94621, before me, LISA M. BOSCHETTI-MAURINO, a Certified Shorthand Reporter in and for the State of California, personally appeared, OFFICER PHILLIP WOOLEY, a witness in the above-entitled court and cause, produced on behalf of the Plaintiffs therein, who, being by me first duly sworn, was thereupon examined as a witness in said action.

--000--

DEPOSITION OF OFFICER PHILLIP WOOLEY

1                   OFFICER PHILLIP WOOLEY,  
2                   having been sworn, was  
3                   examined and testified as follows:  
4

5                   EXAMINATION BY MR. NISENBAUM

6                   MR. NISENBAUM: Q. Please state -- state and  
7                   spell your name. Normally I would be sitting right  
8                   across from you, but --

9                   A. Yeah, I understand, sir.

10                  Q. -- we're distancing.

11                  A. My first name is Phillip, P-h-i-l-l-i-p. My  
12                  last name is Wooley, and it's W-o-o-l-e-y.

13                  Q. All right. And I understand that you're  
14                  currently retired.

15                  A. Technically, yes. I was hired back a few  
16                  weeks ago as a part-time police officer, but I'm  
17                  assigned to the dispatch center just to help out  
18                  training new dispatchers and filling up holes in the  
19                  schedule.

20                  Q. Is that called double-dipping?

21                  A. Kind of, sort of, yes.

22                  Q. It means you get -- you're getting a pension  
23                  now, but you're also working on a impermanent basis?

24                  A. Part-time.

25                  Q. Part-time?



DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. Yes, sir.

2 Q. Okay. All right. And how long were you a  
3 police officer?

4 A. 29 years. Well, let me rephrase that. 26  
5 years as a police officer. I had three years as a  
6 community service officer; it basically means I was in  
7 jail at the City of Hayward.

8 Q. Okay. I was asked going to ask you next, was  
9 all that time working for the City of Hayward?

10 A. Yes, sir.

11 Q. So the police academy you attended would have  
12 been around 1990?

13 A. '89. The end of 1989.

14 Q. So what academy was that?

15 A. Los Medanos in Pittsburg. It was actually at  
16 the community college there. Los Medanos Community  
17 College.

18 Q. Right.

19 A. I had to remember that.

20 Q. I take it you've testified in court before?

21 A. Yes, sir.

22 Q. How many occasions would you estimate?

23 A. 50 to 70.

24 Q. Okay. And when you were at the police  
25 academy, although it was a long time ago, and if you

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. Yes.

2 Q. Okay. And you've been trained that tactical  
3 decisions are those decisions that you make that lead up  
4 to an ultimate use of force, correct?

5 MR. VIGILIA: Objection. Lacks foundation.  
6 Leading.

7 THE WITNESS: Yes.

8 MR. NISENBAUM: Q. Okay. And it's not  
9 sufficient to say, well, the subject made the decisions,  
10 it wasn't me. Your job is to be the one who makes the  
11 decisions, correct?

12 MR. VIGILIA: Objection. Leading.

13 THE WITNESS: That's another question that's  
14 difficult to answer, because the question you're asking  
15 is taking things out of context. I make decisions, but  
16 ultimately the decisions I made are predicated by what  
17 the suspect does.

18 MR. NISENBAUM: Q. Well, they are also  
19 predicated by the information that you have, right?

20 A. Yes.

21 Q. And they are predicated by the force options  
22 that are available to you, correct?

23 A. If you can use them.

24 Q. Sure. But -- and I'm -- I'll get to this in a  
25 moment, but let me just back up a second.

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 Are you familiar with the term "SWATting"?

2 A. Yes.

3 MR. VIGILIA: Objection. Lacks foundation.

4 THE WITNESS: Yes, I am, sir.

5 MR. NISENBAUM: Q. What is that?

6 A. It's when people call in fake calls to have  
7 the police department send their SWAT team out and  
8 surround house they can sit across the street and laugh,  
9 basically.

10 Q. Okay. And you've been -- you were familiar  
11 with that prior to this incident, correct?

12 MR. VIGILIA: Objection. Lacks foundation.  
13 Leading.

14 THE WITNESS: Yes.

15 MR. NISENBAUM: Q. Okay. And I -- and I  
16 assume that that's just one context in which people can  
17 give inaccurate information to dispatch, correct?

18 A. Yes.

19 Q. People can give inaccurate information  
20 unintentionally to dispatch, correct?

21 MR. VIGILIA: Objection. Lacks foundation.  
22 Leading. Calls for speculation.

23 THE WITNESS: Yes, sir.

24 MR. NISENBAUM: Q. Okay. And you knew that  
25 prior to this incident, correct?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. Yes.

2 Q. So it was your understanding at the time of  
3 this incident, that you might have information that came  
4 in from other sources, but you should use your own eyes  
5 and your owns ears as well, correct?

6 MR. VIGILIA: Objection. Lacks foundation.

7 MR. NISENBAUM: Q. Your own senses?

8 MR. VIGILIA: Objection. Lacks foundation.

9 THE WITNESS: Yes.

10 MR. NISENBAUM: Q. Okay. And it was your  
11 understanding that a caller had reported that  
12 Mr. Gonzalez had attacked him or threatened him with a  
13 knife in this incident, correct?

14 MR. VIGILIA: Objection. Lacks foundation.  
15 Assumes facts not in evidence.

16 THE WITNESS: Yes, sir.

17 MR. NISENBAUM: Q. And of course we later  
18 learned he didn't have a knife, correct?

19 MR. VIGILIA: Objection. Leading. Lacks  
20 foundation.

21 THE WITNESS: Yes.

22 MR. NISENBAUM: Q. Yes, he did, or yes,  
23 that's correct?

24 A. No. Yes, that's correct, yes, sir.

25 Q. Okay. In fact, what we learned was that he



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1 held a razor blade, a safety razor blade, right?

2 MR. VIGILIA: Objection. Lacks foundation.  
3 Leading.

4 THE WITNESS: I honestly don't recall what  
5 kind of razor blade it was.

6 MR. NISENBAUM: Q. Okay. You didn't -- did  
7 you see it after the incident?

8 A. Briefly.

9 Q. Okay. Let me ask you this, and if we have to  
10 go under seal, I understand. But it would probably  
11 depend on what the answer is, and if you want a moment  
12 to consult for that purpose, I understand.

13 Have you received any sort of a psychological  
14 counseling or anything of that nature in connection with  
15 this instance?

16 MR. VIGILIA: Objection. Calls for  
17 information protected by the doctor/patient privilege,  
18 and the therapist/patient privilege.

19 Don't answer.

20 MR. NISENBAUM: No. That depends on what the  
21 answer is. I'm entitled to an answer. The question of  
22 whether or not -- you know, whether I can get into the  
23 substance of it is a different question. But, you know,  
24 so...

25 MR. VIGILIA: What's the question again?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 you think that Mr. Gonsalez was approaching you with a  
2 knife?

3 A. Yes, I did.

4 Q. Okay. Did you see a knife?

5 A. I saw something, I wasn't quite sure what it  
6 was.

7 Q. Okay. And your vision is fine, right?

8 A. That is correct.

9 Q. And what time of day did this happen?

10 A. It was nighttime.

11 Q. Okay. Was there lighting on Mr. Gonsalez?

12 A. There was from the headlights of my car, the  
13 patrol car.

14 Q. Okay. And the knife that you thought you saw,  
15 describe what you thought you saw.

16 A. I saw a quick glint of some -- something that  
17 was metallic. But you also have to understand what was  
18 going on at the time, there was a lot of fires up in  
19 California, and the skies were -- or the skies. I'm  
20 sorry. It was a very dark area, and it was very, I  
21 don't know what words you want to use, but alot of the  
22 dust and the fallout from the fires were also in the  
23 air, so it made vision a little bit worse.

24 Q. Well we have video camera footage of the  
25 incident, so -- but we can see with our own eyes what it



DEPOSITION OF OFFICER PHILLIP WOOLEY

1 looked like, right?

2 A. I'm sorry. What what looked like?

3 Q. What the scene was, what the scene looked  
4 like?

5 A. Oh yes, sir.

6 Q. Okay. And of course you have flashlights?

7 A. Yes, sir.

8 Q. You carry those?

9 A. Yes, sir.

10 Q. And tell me what equipment you carry.

11 A. On my gun belt?

12 Q. On your person.

13 A. On my person, I have a Sig Sauer, P-226. It's  
14 S-i-g S-a-u-e-r, I have two spare magazines. I have a  
15 body camera, a collapsible baton, two sets of handcuffs,  
16 a Taser and I have a flashlight in my pocket.

17 Q. Okay. And did you feel that your -- you could  
18 see well enough that you did not need additional  
19 lighting?

20 A. Yes, sir.

21 Q. Okay. So really you're not complaining about  
22 the visual that you had, correct?

23 A. No. No, I am.

24 Q. Okay. So your visual was bad?

25 MR. VIGILIA: Objection. Misstates his prior

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 testimony.

2 THE WITNESS: My eyesight vision was fine.

3 MR. NISENBAUM: Q. Okay.

4 A. But the way the suspect came at me, I could  
5 not completely identify what was in his hands --

6 Q. Did he --

7 A. -- because his hands were cupped together.

8 Q. Did he run at you?

9 A. He did not run. He walked at a fast pace.

10 Q. Okay. Have you been trained that  
11 redeployment, meaning changing your location is an  
12 option to consider?

13 MR. VIGILIA: Objection. Lacks foundation.  
14 Go ahead.

15 THE WITNESS: It is an option to consider,  
16 yes. However, in this particular case, it was not an  
17 option.

18 MR. NISENBAUM: Q. We'll get to that. I'm  
19 just asking you about your training.

20 A. Okay.

21 Q. So "redemption," meaning changing your  
22 location is an option to consider?

23 A. Yes.

24 MR. VIGILIA: Objection. Lacks foundation.

25 MR. NISENBAUM: Q. And when you have multiple

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 people --

2 THE REPORTER: If we can just slow down a bit.

3 THE WITNESS: I apologize, that was my fault.

4 MR. NISENBAUM: Q. And when you have multiple  
5 people, multiple officers present and one subject, and  
6 you know where he is, then you have the ability to  
7 redeploy multiple officers, correct?

8 MR. VIGILIA: Objection. Lacks foundation.  
9 Incomplete hypothetical.

10 THE WITNESS: Yes.

11 MR. NISENBAUM: Q. And we talked about  
12 wanting -- trying to slow a situation down, correct?

13 A. Yes.

14 Q. And one way you can do that is by  
15 redeployment, correct?

16 MR. VIGILIA: Objection. Leading. Lacks  
17 foundation.

18 THE WITNESS: Yes.

19 MR. NISENBAUM: Q. Okay. And Mr. Gonzalez  
20 never ran at you, correct?

21 A. No.

22 Q. No, he did not?

23 A. He did not run at me, no.

24 Q. Okay. And the object that you thought you  
25 saw, you thought you saw a glint of something metallic,

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 and you announced that you saw a knife at the scene,  
2 correct?

3 MR. VIGILIA: Objection. Misstates the  
4 testimony. Lacks foundation.

5 MR. NISENBAUM: Well, I'll strike that.

6 Q. Didn't you announce to other officers that  
7 he's got a knife --

8 MR. VIGILIA: Objection.

9 MR. NISENBAUM: Q. -- meaning -- referring to  
10 Mr. Gonsalez?

11 MR. VIGILIA: Objection. Leading.

12 THE WITNESS: No, I did not.

13 MR. NISENBAUM: Q. What did you say?

14 A. I told --

15 MR. VIGILIA: Objection. Lacks foundation.

16 MR. NISENBAUM: Q. Go ahead.

17 A. I told Mr. Gonsalez to drop the knife.

18 Q. Drop the knife.

19 Okay. So describe to me, you said you saw  
20 a -- a quick glint of something metallic. What size was  
21 the glint that you saw?

22 A. I could not tell you.

23 Q. Was it small; was it like an inch,  
24 inch-and-a-half, or less than that?

25 A. Again, I could not tell you.



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1 Q. Okay. Tell me to the best of your  
2 recollection, was it a foot long?

3 A. No.

4 Q. Okay. Was it six inches long?

5 A. No.

6 Q. Okay. Was it three inches long?

7 A. It could have been.

8 Q. Okay. And what did you do to get a better  
9 view of that?

10 A. I didn't do anything.

11 Q. Okay. You stood in place, correct?

12 A. Correct.

13 Q. Okay. And when you saw it, where was it?

14 A. In his hands.

15 Q. Which hand?

16 A. That, I couldn't tell you.

17 Q. Okay. And his hands were clasped over each  
18 other, correct?

19 A. That is correct, sir.

20 Q. And were his hands up high, like in a stabbing  
21 motion towards you?

22 A. They were pointing directly at me, so not high  
23 in a stabbing motion, no.

24 Q. Weren't they waist height?

25 MR. VIGILIA: Objection. Lacks foundation.

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1 Q. Okay. Well, we'll watch it today, so --

2 A. Okay.

3 Q. -- you know, we'll -- we'll get to it, and I  
4 think you'll see then, what his hand position was, and  
5 where it was.

6 Now, we are confirmed for Thursday right?

7 MR. VIGILIA: As far as I know.

8 MR. NISENBAUM: Okay. Give me one moment, I  
9 just need to reconfirm.

10 THE REPORTER: Do you want to go off the  
11 record?

12 MR. NISENBAUM: Sure.

13 (Brief break taken 10:46 a.m. to 10:46 a.m.)

14 MR. NISENBAUM: Q. I wanted to go back to  
15 your Taser training. What limitations have you been  
16 trained in -- well, strike that.

17 Have you been trained that there are  
18 limitations on the taser's effectiveness?

19 MR. VIGILIA: Objection. Lacks foundation.

20 THE WITNESS: Yes.

21 MR. NISENBAUM: Q. Okay. And what -- what is  
22 your understanding of what those limitations are?

23 A. Well, in order for a Taser to work, you have  
24 to get what's called neuromuscular -- anyway, it's a  
25 fancy term for locking up the muscle systems in the



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1 body. One of the biggest problems you have is that the  
2 probes are not attaching properly to body due to their  
3 clothing, your distance from them so the spread is not  
4 long enough between the probes in order to get the good  
5 lockup. The person's under the influence of alcohol or  
6 drugs. And phasers -- well, phasers. Tasers fail about  
7 50 percent of the time.

8 MR. NISENBAUM: Q. Who told you Tasers fail  
9 about 50 percent of the time?

10 MR. VIGILIA: Objection.

11 MR. NISENBAUM: Q. Where did you hear that?

12 A. It's a national average from what I've been  
13 told for years.

14 Q. From who; is that in training?

15 A. Uh-huh.

16 Q. So you have training that says Tasers fail 50  
17 percent of the time?

18 A. I have tased people where it's gotten complete  
19 total 100 percent lockup on them, and they looked at me  
20 and laughed and pulled the probes out and attacked me.

21 Q. How many times has that happened?

22 A. A couple.

23 Q. How many times have you tased people?

24 A. Personally?

25 Q. Yes.

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1 A. 20, 25.

2 Q. Okay. So that's two out of 20, 25 times?

3 A. Uh-huh.

4 Q. And were all those in probe deployment mode?

5 A. In -- yes.

6 Q. Okay. The taser can also be used in a  
7 different way, in touch-tase mode, correct?

8 A. It's called drive-stun, yes, sir.

9 Q. Right. And drive-stun is just pain  
10 compliance, correct?

11 A. Yes.

12 Q. So when we talk about the 20 or 25 times,  
13 you're talking about probe mode?

14 A. Yes. I never drive-stunned anyone.

15 Q. Okay. And so if a person's wearing a  
16 hoodie -- well, you talked about the clothing that a  
17 person's wearing. What you need is -- is sufficient --  
18 the darts need to penetrate clothing sufficiently to hit  
19 the skin, correct?

20 A. Yes, sir.

21 Q. All right. So when a person's wearing a puffy  
22 jacket, it can be a problem?

23 A. Yes.

24 Q. But if a person's not wearing a puffy jacket,  
25 for example, if they are just wearing like a hoodie or

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1 A. Yes.

2 Q. Is that your understanding of how the taser  
3 should function and should work?

4 A. That is correct.

5 Q. Okay. And the person's wearing a shirt,  
6 right?

7 A. Yes.

8 MR. NISENBAUM: Okay. And then I'll make this  
9 Exhibit B.

10 And you have it already.

11 (Whereupon, Plaintiffs' Exhibit B was marked  
12 for identification.)

13 THE WITNESS: Thank you.

14 MR. NISENBAUM: Q. Exhibit B, this is from  
15 the user manual for the X2. I think I said M2, but  
16 that's actually the old one, the X26, right?

17 A. Yes.

18 Q. Okay. So the X2. Do you know if you -- the  
19 one that you had was the one that had dual cartridges,  
20 correct?

21 A. Yes, sir.

22 Q. Okay. So you had two cartridges, meaning if  
23 one cartridge failed, you had a backup cartridge?

24 A. Yes.

25 Q. Okay. Without having to change the cartridge?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. Yes.

2 Q. Okay. And so we have a similar illustration,  
3 and that is of a person -- this one the person's holding  
4 a crowbar, apparently threatening the officer with a  
5 crowbar. The officer tases the person from a distance,  
6 and they fall down, correct?

7 A. Yes.

8 Q. Again, this is -- this is what Taser says  
9 should happen, correct?

10 MR. VIGILIA: Objection. Calls for  
11 speculation. Lacks foundation.

12 THE WITNESS: Yes.

13 MR. NISENBAUM: Q. Okay. And it was your  
14 understanding that that's how the Taser is supposed to  
15 work and function at the time that this incident  
16 occurred, correct?

17 A. That's another difficult question to answer  
18 with just a yes or no answer.

19 Q. Okay. Explain.

20 A. You're again talking in a perfect world. And  
21 I've already explained to you that half the time a Taser  
22 does not work on a person. So if you want to go by the  
23 perfect world of what Taser International says, yes,  
24 then it should have -- could have -- could have  
25 functioned that way.



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1 Q. So instead of shooting him, you got out of  
2 your car, right?

3 A. Yes.

4 Q. Okay. And what did you do?

5 A. I got out of my car, took out my gun, pointed  
6 it at him, and told him to drop the knife.

7 Q. And who else was present, what other officers?

8 A. No one.

9 Q. Okay. And then he turned away from the person  
10 he was talking to?

11 MR. VIGILIA: Objection. Lacks foundation.

12 MR. NISENBAUM: Q. Well, strike that. Let me  
13 go back.

14 I know that you said that he sounded angry,  
15 right?

16 MR. VIGILIA: Objection. I don't -- misstates  
17 the testimony.

18 MR. NISENBAUM: Q. You heard -- you couldn't  
19 tell the words that Mr. Gonzalez was saying, but it  
20 sounded like he was, what?

21 A. I didn't hear anything he said at all, so I  
22 couldn't tell you if he was angry or not.

23 Q. Was he yelling?

24 A. I -- that, I don't recall.

25 Q. Did you see his face at that time?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. No.

2 Q. Okay. Did you see the other person's face?

3 A. The girl?

4 Q. Yeah.

5 A. Yes.

6 Q. Okay. And what did her face look like?

7 A. Scared.

8 Q. Okay. So she looked scared. And did it look  
9 like Mr. Gonzalez was holding on to her?

10 A. He was -- he did not -- my recollection, he  
11 was not touching her.

12 Q. Okay. So she looked scared. But Mr. Gonzalez  
13 was not touching her. How close to her was she -- was  
14 he?

15 A. He was close enough to stab her.

16 Q. How close was he to her, how many feet?

17 A. A foot away.

18 Q. One foot away.

19 Okay. Because you would agree, I'm close  
20 enough to stab you, right?

21 A. Uh-huh.

22 Q. Okay. All right. Now you're coming to this,  
23 having been primed by the call that says there's a  
24 knife, right?

25 A. Yes.



DEPOSITION OF OFFICER PHILLIP WOOLEY

1 Q. Okay. You arrive, you don't see a knife,  
2 right?

3 MR. VIGILIA: Objection. Leading. Misstates  
4 the testimony.

5 MR. NISENBAUM: Q. You don't recall what you  
6 see, but you don't have a recollection of seeing a  
7 knife?

8 A. Correct.

9 Q. Okay. You could tell that there is some  
10 dispute between -- some confrontation between  
11 Mr. Gonzalez and the other person, the woman, correct?

12 A. Yes.

13 Q. And what else did the call say?

14 A. The dispatch call?

15 Q. Yes, that you responded to.

16 A. That he was trying to stab a male.

17 Q. Okay. And did you see the male?

18 A. He was right in front of my patrol car.

19 Q. Okay. Did it look like he was -- had been  
20 stabbed?

21 A. No.

22 Q. Okay. He didn't appear to be injured at all,  
23 correct?

24 MR. VIGILIA: Objection. Lacks foundation.

25 THE WITNESS: Correct.

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 MR. NISENBAUM: Q. Okay. And did you ask  
2 him, what's going on?

3 A. No.

4 Q. Did you ask him any questions?

5 A. No.

6 Q. Did he give you any information?

7 A. He said, that's the guy right there, and  
8 pointed to Mr. Gonzalez. Then he ran directly toward  
9 him, and grabbed the girl and pulled her out of the way.

10 Q. Okay. So he grabbed the girl, pulled her out  
11 of the way.

12 Did Mr. Gonzalez try to go after the girl at  
13 that time?

14 A. No.

15 Q. Did he try to go after the man at that time?

16 A. No.

17 Q. Okay. So the threat to that person, to the  
18 girl had been removed, correct?

19 A. No.

20 Q. Okay. Well, in what way? He didn't run after  
21 her?

22 A. She was still in close proximity, so he could  
23 at any time.

24 Q. So he could at any time.

25 You never saw him threaten her?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 MR. VIGILIA: Objection. Lacks foundation.  
2 Leading. Calls for an expert opinion. Calls for  
3 speculation.

4 THE WITNESS: It's possible.

5 MR. NISENBAUM: Q. Okay. I mean, what else  
6 would you take those words to mean?

7 MR. VIGILIA: Objection. Calls for  
8 speculation.

9 THE WITNESS: I've had people say that to me  
10 before.

11 MR. NISENBAUM: Q. Okay. So it could be  
12 suicidal, could not be suicidal?

13 A. Yes.

14 Q. Did it appear that Mr. Gonzalez appeared to be  
15 intoxicated?

16 MR. VIGILIA: Objection. Calls for  
17 speculation.

18 THE WITNESS: I could not tell.

19 MR. NISENBAUM: Q. Okay. Did you smell like  
20 the odor of alcohol from him?

21 A. He would -- never got close enough to me to  
22 smell that.

23 Q. Okay. So there was nothing specific that  
24 appeared about him that caused you to think that he was  
25 intoxicated, correct?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. Correct.

2 Q. Okay. And there was nothing specific that  
3 caused you to think that he was mentally impaired,  
4 correct?

5 A. Correct.

6 Q. And there was nothing specific that caused you  
7 to think that he was suicidal, correct?

8 A. Correct.

9 Q. Okay. So you thought that he was not  
10 threatening you?

11 A. Yes.

12 Q. Okay. And you were at your patrol car?

13 A. Just to the left of it, yes.

14 Q. Okay. Were you using the door as cover?

15 A. Partially.

16 Q. And this is the driver's side door?

17 A. Yes.

18 Q. Okay. And were you standing kind of in the  
19 "V" of the door?

20 A. No. I was a little bit further out.

21 Q. A little bit further to the left, meaning left  
22 of the driver's side door, or back closer to the trunk?

23 A. No. Left of the driver's side door.

24 Q. Okay. Was there anything that was blocking  
25 you from behind?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 A. I don't believe so.

2 Q. Okay. I take it you took a moment to glance  
3 around at your surroundings?

4 A. No.

5 MR. VIGILIA: Objection.

6 MR. NISENBAUM: Q. You did not.

7 Okay. Were you aware that -- were you aware  
8 that you had the ability to change your location?

9 A. Again, another difficult question to answer.  
10 Yes, I was aware I could have moved.

11 Q. Okay. Now were you aware that other officers  
12 were arriving?

13 A. No.

14 Q. You called it in, that you were responding,  
15 correct?

16 A. Yes.

17 Q. Okay. And you have your radio open, meaning,  
18 I assume you had an earpiece in?

19 A. No, I don't use an ear piece, and I don't use  
20 a shoulder mic.

21 Q. Were you able to hear your radio from your  
22 car?

23 A. Yes. Right.

24 Q. Okay. So did you hear -- were you listening  
25 to it?



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1 A. Yes.

2 Q. Okay. Now is there any reason why you didn't  
3 have your Taser at your disposal?

4 A. You don't bring less lethal to a lethal force  
5 encounter.

6 Q. It doesn't make any sense.

7 A. It makes perfect sense.

8 Q. No. I mean the taser -- the knife is only --  
9 if there is a knife -- and you've used a taser, you  
10 said, against people who have had weapons in their hand,  
11 right?

12 A. Yes.

13 Q. Okay. So what type of -- what type of weapons  
14 have you used against people have had -- strike that.

15 What type of weapons have people had in their  
16 hands that you've used a taser against?

17 A. Meat cleavers.

18 Q. Okay.

19 A. Machetes.

20 Q. These are deadly weapons, aren't they?

21 A. Yes.

22 Q. Far more deadly than razor blades, right?

23 A. I didn't know he had a razor blade. I thought  
24 he had a knife. That's the only information I had.

25 Q. Well, I get that. But you also have your



DEPOSITION OF OFFICER PHILLIP WOOLEY

1 have shot him if you were aware that it was a razor  
2 blade, right?

3 A. That's not true at all.

4 Q. Okay. So -- so if it was a razor blade, it  
5 doesn't matter. Knife, razor blade, whatever, same  
6 scenario, you knew it was a razor blade, you would have  
7 shot him, correct?

8 MR. VIGILIA: Objection. Calls for  
9 speculation. Lacks foundation. Incomplete  
10 hypothetical.

11 THE WITNESS: I can't answer that.

12 MR. NISENBAUM: Q. Why not?

13 A. I just -- because I can't answer it. I don't  
14 have an answer for that question.

15 Q. Okay.

16 A. I can't -- I can't -- I've already explained  
17 to you that there is very little black and white in  
18 police work. We operate in gray. Okay? So I can't  
19 answer, oh, it was a razor blade, I would have shot him  
20 anyway. I don't know what I would have done.

21 Q. Do you believe that three well-trained  
22 officers encountering a man with a razor blade, who had  
23 threatened people with a razor blade, who all three  
24 officers have Tasers on their person, that they wouldn't  
25 be able to take the person into custody without shooting

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 him?

2 A. I didn't know --

3 MR. VIGILIA: Objection. Calls for  
4 speculation. Lacks foundation. Incomplete  
5 hypothetical. Compound.

6 THE WITNESS: Answer?

7 MR. VIGILIA: Yes.

8 MR. NISENBAUM: Q. Yes.

9 A. I didn't know there were other two officers  
10 there. I thought I was alone.

11 Q. Well, you didn't hear sirens approaching?

12 A. No.

13 Q. Why not?

14 A. Lots of reasons.

15 Q. Auditory exclusion?

16 A. That's one of them.

17 Q. Is that a term you've been...

18 THE REPORTER: Excuse me?

19 MR. NISENBAUM: Q. Is that a term you've been  
20 trained in?

21 A. Yes.

22 Q. So -- I'm sorry. Did you actually ask for  
23 backup?

24 A. No. As you said, I already knew they were  
25 coming just via the radio.

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 Q. Okay. But you don't recall listening to see  
2 if you could tell how close they were?

3 A. No.

4 Q. No, you do not?

5 A. No, I don't. I don't recall listen --  
6 assessing that at all.

7 Q. I take it you don't recall assessing the use  
8 of other force options short of lethal force, correct?

9 MR. VIGILIA: Objection. Misstates testimony.  
10 Leading.

11 THE WITNESS: I didn't have time.

12 MR. NISENBAUM: Q. You didn't do it --

13 A. No --

14 Q. -- correct?

15 A. -- because I didn't have time.

16 Q. My question to you, did you assess whether or  
17 not other less lethal options would be viable?

18 A. Yeah.

19 Q. You did?

20 A. I did, yes.

21 Q. When did you do that, was it before you saw  
22 the glinty thing, or after?

23 A. Driving all the way up from where I was  
24 originally all the way up to the call.

25 Q. Okay. So in driving, did you think -- what

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 did you think, how did you make your assessment?

2 A. What do you mean by that?

3 Q. Well, you said that you assessed other less  
4 lethal force options. How did you make that assessment?

5 A. You always think about it.

6 Q. What did you think about in this case? Not  
7 what you always think about.

8 A. Taser, 40 millimeter launcher.

9 Q. Okay. And did you think Taser check, yes, I  
10 have that on me, it's right on my belt here?

11 A. Yeah, every day I go out.

12 Q. I'm not asking every day. I'm asking  
13 specifically what you thought on this day, responding to  
14 this scene?

15 A. Yes, sir.

16 Q. Okay. So you thought taser. So you knew you  
17 had the taser available, correct?

18 A. Yes.

19 Q. And you thought OC spray, you had that  
20 available?

21 A. Yes.

22 Q. What else did you think? You said 40  
23 millimeter launcher, you didn't have that in your car,  
24 correct?

25 A. I didn't, but I knew a sergeant was



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1 responding.

2 Q. Okay. And you knew that these are weapons  
3 that could only be used if they were out and available,  
4 correct?

5 A. Yes.

6 MR. VIGILIA: Objection. Argumentative.

7 MR. NISENBAUM: Q. Okay. And did you think  
8 how you would be able to use each of these force options  
9 in the situation? Did you think what you would do to be  
10 able to use these force options?

11 A. Yes.

12 MR. VIGILIA: Objection. Compound.

13 MR. NISENBAUM: Q. And what was your plan?

14 A. Again, this is another one of those questions  
15 that's very difficult to answer, because of the way  
16 you're phrasing it. You always have a plan if -- again,  
17 and this is the big if, the suspect allows you to  
18 implement it. Again, you can laugh and shake your head  
19 all you want, but he dictated what happened that night,  
20 not me. Had he just stood there in the middle of the  
21 street and not come at me, we would have put together a  
22 plan. He didn't give me the time to do that.

23 Q. What do you think -- what do you see your job  
24 as? What did you see your job as, the purpose of it?

25 MR. VIGILIA: Objection. Vague.

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1 THE WITNESS: My job at that moment of the  
2 incident, or my job overall?

3 MR. NISENBAUM: Q. Your job as a police  
4 officer, period, overall?

5 MR. VIGILIA: Objection. Vague. Calls for a  
6 narrative.

7 THE WITNESS: My job overall is to protect our  
8 public and enforce the laws of the State of California.

9 MR. NISENBAUM: Q. Okay. And did you see  
10 part of your job being to help people?

11 A. Absolutely.

12 Q. Okay. But when you have a plan -- you said  
13 you always come to a situation with a plan, right?

14 A. Yes.

15 Q. And the plan, you want to minimize the damage  
16 that you inflict, correct?

17 MR. VIGILIA: Objection. Lacks foundation.

18 MR. NISENBAUM: Q. You want to stop the harm  
19 inflicted by others, but you want to also minimize the  
20 damage that you inflict?

21 MR. VIGILIA: Objection. Lacks foundation.

22 THE WITNESS: Whenever possible, yes, sir.

23 MR. NISENBAUM: Q. Okay. And that's one of  
24 the reasons -- you understood that was one of the  
25 reasons why you've been given a taser, right?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 MR. VIGILIA: Objection. Lacks foundation.  
2 Leading.

3 THE WITNESS: A Taser was not called for in  
4 this situation.

5 MR. NISENBAUM: Q. I asked you, you  
6 understood that one reason you've been given a Taser is  
7 because it limits the harm that you inflict?

8 A. Yes.

9 Q. Okay. And you say a Taser wasn't called for  
10 in this situation, but you're -- you have no reason to  
11 believe that the Taser would not have worked against the  
12 man, correct?

13 MR. VIGILIA: Objection. Leading. Lacks  
14 foundation. Calls for speculation.

15 THE WITNESS: I have no reason to believe it  
16 wouldn't have, no.

17 MR. NISENBAUM: Q. And he wasn't wearing a  
18 puffy jacket, correct?

19 MR. VIGILIA: Objection. Lacks foundation.  
20 Leading.

21 THE WITNESS: To best of my recollection, no.

22 MR. NISENBAUM: Q. His clothing was  
23 appropriate for the Taser to be used against, correct?

24 MR. VIGILIA: Objection. Vague and ambiguous  
25 to the term "appropriate." Lacks foundation.

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 MR. NISENBAUM: Q. Based on your attorney.

2 A. Yes.

3 Q. Okay. You couldn't tell that he was  
4 intoxicated, correct?

5 A. One more time.

6 Q. You could not tell if he was intoxicated,  
7 correct?

8 A. Correct.

9 Q. You couldn't tell that he was suffering from  
10 any psychotic break that would have caused him to not  
11 feel pain, correct?

12 MR. VIGILIA: Objection. Calls for expert  
13 opinion. Lacks foundation.

14 THE WITNESS: Correct.

15 MR. NISENBAUM: Q. He didn't appear to be  
16 suffering from excited delirium, right?

17 MR. VIGILIA: Objection. Lacks foundation.  
18 Calls for expert opinion.

19 THE WITNESS: No.

20 MR. NISENBAUM: Q. He wasn't sweating  
21 profusely, correct?

22 A. I couldn't tell that.

23 Q. But you didn't see him sweating profusely,  
24 correct?

25 A. No.



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1 MR. VIGILIA: Objection. Misstates testimony.  
2 Lacks foundation.

3 MR. NISENBAUM: Q. No, you did not?

4 A. No, I did not.

5 Q. Okay. So -- and you've been trained that the  
6 taser should be of limited exposure against people who  
7 exhibit symptoms of excited delirium, correct?

8 MR. VIGILIA: Objection. Lacks foundation.

9 THE WITNESS: Yes.

10 MR. NISENBAUM: Q. And that's not because a  
11 Taser won't work against them, but because the Taser  
12 could contribute to potentially killing them, correct?

13 MR. VIGILIA: Objection. Lacks foundation.

14 THE WITNESS: That's correct.

15 MR. NISENBAUM: Q. Okay. But those -- that  
16 wasn't present in this case?

17 A. No.

18 Q. So if you were to use the taser against  
19 Mr. Gonzalez and it's effective, then he's alive and  
20 everyone is good, right?

21 MR. VIGILIA: Objection. Calls for  
22 speculation. Argumentative.

23 THE WITNESS: I don't know.

24 MR. NISENBAUM: Q. So if you use a Taser  
25 against him, how does he die?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 MR. VIGILIA: Objection. Calls for  
2 speculation.

3 MR. NISENBAUM: Q. How does Mr. Gonzalez die?

4 A. I don't know how Mr. Gonzalez died. But I  
5 could have died if I used a Taser and it didn't work.

6 Q. I assume that once you use a Taser it's a  
7 dynamic situation, and you could continue to do other  
8 things such as redeploy, change your location, drop the  
9 taser if it doesn't work, and then resort to lethal  
10 force?

11 A. By the time --

12 MR. VIGILIA: Objection. Objection. Lacks  
13 foundation. Compound. Calls for speculation.

14 THE WITNESS: By the time I did that, he would  
15 have already been on top of me, stabbing me.

16 MR. NISENBAUM: Q. Really?

17 A. Really.

18 Q. He wasn't running at you.

19 A. It doesn't mean -- he could have changed and  
20 started running at any time.

21 Q. Things could change all the time, right?

22 A. (Nods head.)

23 Q. But you have to deal with what's been  
24 happening. He didn't show that indication, correct?

25 A. Correct.

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1 Q. So it wasn't like he started to run, and then  
2 you shot him, correct?

3 A. Correct.

4 Q. There was nothing about his pace that changed  
5 causing you to shoot him, correct?

6 A. No.

7 Q. No, it was not?

8 A. No.

9 Q. I'm sorry. No, it was not?

10 A. No, it was not. No. He -- yeah, no.

11 Q. Just prompting you because there was a double  
12 negative in the question, so I just need to follow up to  
13 make clear what you're asking -- what you're saying,  
14 though, too.

15 A. Okay.

16 Q. So when you -- you say you always have a plan.  
17 When you -- you came to this incident, and by the time  
18 you got out of the car, your plan did not include the  
19 use of less lethal alternatives, correct?

20 MR. VIGILIA: Objection. Lacks foundation.  
21 Misstates the evidence.

22 THE WITNESS: Correct.

23 MR. NISENBAUM: Q. Okay. The only option  
24 that you had was a lethal option at the time you shot  
25 and killed him, because it was in your hand; is that

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 right?

2 MR. VIGILIA: Objection. Lacks foundation.

3 THE WITNESS: Another hard question to answer.

4 MR. NISENBAUM: Q. Okay. I'll rephrase it.

5 You -- if you had chosen to, you could have put the  
6 lethal option away, and you could have pulled out the  
7 less lethal option, the Taser, correct?

8 MR. VIGILIA: Objection. Incomplete  
9 hypothetical. Calls for speculation.

10 THE WITNESS: Yes.

11 MR. NISENBAUM: Q. Okay. Thank you.

12 And were you keeping that option open in your  
13 mind?

14 A. Yes.

15 Q. Okay. Well, with that in mind, we'll go  
16 through the video with you. Strike that.

17 Did you give him a warning that you would  
18 shoot?

19 A. I did not.

20 Q. Okay. Now you're familiar with -- with the  
21 Hayward Police Department use of force policy, correct?

22 A. Yes.

23 Q. And aren't you supposed to give a warning that  
24 you'll use lethal force against the person?

25 A. When feasible.



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1 Q. Right. You're supposed to say -- are there  
2 particular words you're supposed to say?

3 A. No.

4 Q. Okay. Well, you could say something like,  
5 stop or I'll shoot, right?

6 A. Yes.

7 Q. Give a command followed by, or I'll shoot?

8 A. Yes.

9 Q. Some people say, or you'll be shot?

10 A. Yes.

11 Q. Okay. Did you think about giving a warning in  
12 this situation?

13 A. That I would shoot him?

14 Q. Yeah.

15 A. No.

16 Q. Okay. And the reason you didn't give a  
17 warning is that because he was already saying, you're  
18 going to have to shoot me?

19 A. Well, no. It was pretty obvious, I was  
20 pointing a gun at him, and I told him to stop. I told  
21 him to drop the knife three times, and stop. It's  
22 pretty obvious what was going to happen next.

23 Q. Maybe to you, but you're not in his shoes.

24 A. No.

25 Q. You don't know whether or not he is suffering

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1 from a mental impairment, or is intoxicated, or is not  
2 comprehending the situation, correct?

3 A. That's correct.

4 Q. And so part of making sure that you give a  
5 verbal warning is to reinforce the physical reality of  
6 the situation, correct?

7 MR. VIGILIA: Objection. Lacks foundation,  
8 leading. Incomplete hypothetical.

9 THE WITNESS: Correct.

10 MR. NISENBAUM: Q. Okay. So when was the  
11 last time that you gave consideration to using your  
12 Taser in the situation?

13 A. I don't recall.

14 Q. Okay. Do you recall ever giving consideration  
15 to using your Taser?

16 A. Yes.

17 Q. Okay. When was the first time that you recall  
18 giving consideration to using your Taser in this  
19 incident?

20 A. While driving to the call.

21 Q. Okay. Do you recall giving further  
22 consideration to using your Taser apart from while  
23 driving?

24 A. No.

25 Q. Okay. So it's your recollection, the first

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 and last time that you can recall giving consideration  
2 to using your Taser was while you were driving to the  
3 situation, correct?

4 A. That's correct.

5 Q. Okay. And was that before you had actually  
6 seen Mr. Gonzalez?

7 A. Oh, yes.

8 Q. Okay. So the first and last time that you can  
9 recall giving consideration to using your Taser was  
10 while driving to scene before you had scene  
11 Mr. Gonzalez, correct?

12 A. Can you say that one more time.

13 Q. The first and last time that you can recall  
14 giving consideration to using your Taser was while  
15 driving to the scene before you had seen Mr. Gonzalez,  
16 correct?

17 MR. VIGILIA: Objection. Compound. Asked and  
18 answered.

19 Go ahead.

20 THE WITNESS: Yes.

21 MR. NISENBAUM: Q. Okay. Thank you.

22 THE REPORTER: Are we going to go off the  
23 record to look at the video?

24 MR. NISENBAUM: What's that?

25 THE REPORTER: Are we going to go off the

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1 donated them to our -- we gave them to our friend who is  
2 nurse, because she didn't have enough for her, so this  
3 is like the last one, actually.

4 MR. NISENBAUM: Q. Okay. So I'm playing from  
5 a video file that is titled -- produced by the defense,  
6 titled AXON Body 2 Video 2018-11-15, 2115.mp4. And I'll  
7 hit play.

8 (Video playing.)

9 MR. NISENBAUM: Q. It's at 11 seconds now.  
10 It's silent, although there is video footage on it.

11 And the audio will pick up.

12 A. That's the 30 second buffer.

13 Q. I'll take the privacy screen off of it.

14 A. I didn't even know it was on.

15 Q. Rodgers made us put them on our computers.  
16 I'll just go ahead and pause it here at 01:10.

17 Okay. So first of all, the 30 second period  
18 where there is video, but no audio, that's -- that 30  
19 seconds will proceed when you activate the body cam,  
20 correct?

21 A. Correct.

22 MR. VIGILIA: Objection. Lacks foundation.

23 MR. NISENBAUM: Q. Okay. And do you know --  
24 I paused it at 01:10.

25 Are you already responding to the call, if you



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1 know?

2 A. Yes, sir.

3 Q. And is the reason why you activated the body  
4 cam, because you're responding to the call?

5 A. Yes, sir.

6 Q. Okay. And so you've already got the  
7 information from dispatch that the person had been  
8 threatened with a knife?

9 A. Yes, sir.

10 Q. Okay. And of course you knew nothing about  
11 Mr. Gonsalez's background, correct?

12 MR. VIGILIA: Objection. Lacks foundation.  
13 Leading.

14 THE WITNESS: I did not.

15 MR. NISENBAUM: Q. Okay. You didn't  
16 recognize -- well, strike that.

17 You weren't even given his name, were you?

18 A. No.

19 Q. Okay.

20 A. I only learned his name from about two or  
21 three months after.

22 Q. Okay. We're continuing at 01:10.

23 So before I continue, it's fair to say that  
24 nothing of Mr. Gonsalez's background informed your  
25 conduct, correct?

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1 MR. VIGILIA: Objection. Lacks foundation.

2 THE WITNESS: Correct.

3 MR. NISENBAUM: Q. Thank you.

4 Continuing at 01:10.

5 (Playing video.)

6 MR. NISENBAUM: Q. Pausing at 02:57.

7 Someone said, "What the fuck!," or something  
8 like that?

9 A. That was me.

10 Q. Okay. And what was that in response to?

11 A. All I can hear was someone whistling. I just  
12 couldn't tell where he was whistling from, so I was  
13 dumbfounded, where is this guy calling me from? I  
14 couldn't find him.

15 Q. Okay. Meaning there was a whistle you heard  
16 outside the car --

17 A. Yes, sir.

18 Q. -- as opposed to from your radio?

19 A. Yeah.

20 Q. All right. 02:58, continue.

21 (Playing video.)

22 MR. NISENBAUM: Q. Let me ask you one other  
23 question at 03:05, pausing that.

24 What -- you're familiar with this area; it's  
25 your beat, right?

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 response was conditioned on your belief that he had a  
2 knife, correct --

3 MR. VIGILIA: Objection.

4 MR. NISENBAUM: Q. -- that Mr. Gonzalez had a  
5 knife?

6 MR. VIGILIA: Objection. Lacks foundation.

7 THE WITNESS: I would say it's fair to say.

8 MR. NISENBAUM: Q. Okay. All right. Now I'm  
9 going to play from 03:51.

10 (Playing video.)

11 MR. NISENBAUM: Q. So how many shots did you  
12 fire?

13 I paused it at 03:54.

14 A. I don't know. I have no idea.

15 Q. Even as you sit here?

16 A. Even as I sit here, I don't know.

17 Q. Okay. Once he stopped moving, why was he  
18 shot?

19 A. I don't understand the question. Stopped  
20 moving, where?

21 Q. Towards you.

22 A. I didn't see him stop moving.

23 Q. Okay. Well, at 03:54 -- let's go back.

24 Back to 03:49 for context. And if you can  
25 tell me -- I want you to watch this and tell me why he

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 was shot after he stopped moving.

2 (Playing video.)

3 MR. NISENBAUM: Q. And again, he stopped  
4 moving towards you?

5 A. My perception at that time at that moment was  
6 he was not stopping moving. He was still coming at me.

7 Q. But it's clear from the video that that's not  
8 the case?

9 A. I don't care about the video. The video  
10 doesn't mean anything. You weren't the one standing  
11 there.

12 Q. Okay.

13 A. I was. In my perception, he was still moving  
14 at that moment in time.

15 Q. So --

16 A. Remember, we're not going to do the hindsight  
17 20/20 thing again, remember that?

18 Q. I don't --

19 A. So my perception at that moment in time was he  
20 was coming at me.

21 Q. Right.

22 A. I don't care what the video says.

23 Q. So you're saying that if your perception is  
24 unreasonable, or if your -- strike that.

25 If your perception is inaccurate, then it



DEPOSITION OF OFFICER PHILLIP WOOLEY

1 doesn't matter --

2 MR. VIGILIA: Objection. Argumentative.

3 MR. NISENBAUM: Q. -- is that correct?

4 MR. VIGILIA: Objection. Argumentative.

5 THE WITNESS: My perception was not inaccurate  
6 at the time.

7 MR. NISENBAUM: Q. Well, I -- you've been  
8 trained that you're supposed -- that you shoot until the  
9 threat stops, correct?

10 A. That is correct.

11 Q. In this case, it's fair to say that the threat  
12 stops once he stops moving towards you, correct?

13 A. No.

14 MR. VIGILIA: Objection. Lacks foundation.

15 THE WITNESS: That's not true at all.

16 MR. NISENBAUM: Q. Okay. Well, how can he be  
17 a threat if he's not moving towards you?

18 A. He was moving toward me. That was my  
19 perception at the time was that he was moving toward me.

20 Q. But we see the video.

21 A. Again, I don't care what the video says.

22 Q. So forget reality?

23 A. We're not going to go back on the 20/20  
24 hindsight. At my time, standing right there, he was  
25 coming at me.

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1 Q. Okay. So your view is that your judgment is  
2 not to be questioned? If the video is contrary to your  
3 recollection, you know, your judgment, your recollection  
4 is not to be questioned; is that correct?

5 A. No.

6 MR. VIGILIA: Objection. That's  
7 argumentative.

8 THE WITNESS: You can question my rec- -- all  
9 of -- I'm not saying that.

10 MR. NISENBAUM: Q. Well, you just said that.

11 A. Okay. I can only go off what was going on at  
12 the time.

13 Q. Okay. Once he stops moving, you would agree  
14 that there is no basis to shoot him, correct?

15 A. No.

16 MR. VIGILIA: Objection. Incomplete  
17 hypothetical. Calls for speculation.

18 MR. NISENBAUM: Q. The reason you shot him is  
19 because he was moving towards you with what you thought  
20 was a knife, correct?

21 A. That is correct.

22 Q. Okay. Once he stops moving towards you, you  
23 would agree that there is no basis to shoot him?

24 A. I would not agree.

25 MR. VIGILIA: Objection. Lacks foundation.

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1 THE WITNESS: So I just basically left my body  
2 cam on until...

3 THE REPORTER: So I just basically left my  
4 body cam on until?

5 THE WITNESS: The watch commander told me to  
6 turn it off.

7 MR. NISENBAUM: Q. I understand. And then  
8 there is another body cam clip after this.

9 (Video playing.)

10 THE WITNESS: And that was me again.

11 MR. NISENBAUM: I understand. I got it. I'll  
12 ask you questions.

13 THE WITNESS: Okay. I'm sorry.

14 (Video still playing.)

15 MR. NISENBAUM: Q. No, I get it. But I just  
16 have to review both of them and make sure I have  
17 everything on it.

18 (Playing video.)

19 MR. NISENBAUM: Q. 07:45, that was your voice  
20 saying, "over a razor blade"?

21 A. Uh-huh.

22 Q. Okay. And what is -- why were you saying  
23 that, "over a razor blade"?

24 A. I couldn't tell you.

25 Q. Is it because you couldn't believe that it was

DEPOSITION OF OFFICER PHILLIP WOOLEY

1 a razor blade and not a knife?

2 A. I -- I could not tell you, sir.

3 MR. VIGILIA: Objection. Leading.

4 THE WITNESS: I don't even remember saying it  
5 until I just saw it.

6 MR. NISENBAUM: Q. I understand. It's one of  
7 those things where you're thinking out loud?

8 A. It could have been.

9 Q. All right. 07:46. Continuing.

10 (Playing video.)

11 MR. NISENBAUM: Q. Pausing at 08:57. That  
12 was your voice saying, "Yeah, that's what he said. He  
13 came at me with a knife and he said, You're going to  
14 have to shoot me"?

15 A. Yes, that's my voice.

16 Q. 08:57. Continuing.

17 (Playing video.)

18 MR. NISENBAUM: Q. Okay. Now I'll go to the  
19 next one. And this is a file that is much shorter, it's  
20 labeled -- or titled, AXON Body 2 Vid 8-11-15 2348.mp4.

21 (Playing video.)

22 MR. NISENBAUM: I'll do it this way.

23 Q. We are now at the next video is titled, AXON  
24 Body 2 Video, 2018-11-15 2348.mp4.

25 And it's a 02:57 clip -- and 57 second clip,



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1 what you thought was a knife, what steps did you take to  
2 reacquire sight of it?

3 A. I just kept focusing on his hands.

4 Q. Okay. And you didn't see it again?

5 A. That is correct.

6 Q. And you would agree that the certain way to  
7 ensure that a Taser does not work is to not use it --

8 MR. VIGILIA: Objection. Argumentative.

9 MR. NISENBAUM: Q. -- correct?

10 THE WITNESS: A certain way?

11 MR. NISENBAUM: Q. To be the 100 percent  
12 certain way to ensure that Taser will not work, is if  
13 you don't use it, correct?

14 MR. VIGILIA: Objection. Argumentative.

15 THE WITNESS: I guess so, yeah.

16 MR. NISENBAUM: Thank you. No further  
17 questions.

18 MR. VIGILIA: Thank you.

19 THE REPORTER: Do you have any questions?

20 MR. VIGILIA: No.

21 THE REPORTER: And I just need to get copy  
22 orders on the record.

23 MR. NISENBAUM: Always, right.

24 THE REPORTER: Yeah, yeah.

25 MR. VIGILIA: A copy of what?

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1 THE REPORTER: Do you want -- you want it  
2 expedited, right?

3 MR. VIGILIA: Yes.

4 THE REPORTER: And did you have a particular  
5 date in mind, because they'll ask me for it.

6 MR. VIGILIA: For -- let's just say by next --  
7 what's next Friday?

8 MR. NISENBAUM: No, I'm sorry. Let me go back  
9 on record. I forgot one question.

10 THE REPORTER: We're still on the record.

11

12 CONTINUED EXAMINATION BY MR. NISENBAUM

13 MR. NISENBAUM: Okay. Great.

14 Q. I forgot one question. Do you do a spark -- I  
15 forgot one area.

16 Do you do a spark test at the start of your  
17 shift?

18 A. Yes.

19 Q. So you knew that your taser was functioning?

20 A. Yes.

21 Q. Okay. There is no issue about it being  
22 charged, not being charged or functioning, not  
23 functioning, correct?

24 A. No.

25 Q. It was charged and working?

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1           A.       Yes.

2                   MR. NISENBAUM: Thank you. No further  
3 questions.

4                   THE WITNESS: You're welcome.

5                   MR. VIGILIA: So by Friday, April 3rd.

6                   THE REPORTER: Friday?

7                   MR. VIGILIA: Yes, April 3rd.

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9                   (Deposition concluded at 12:31 p.m.)

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## DEPOSITION OF OFFICER PHILLIP WOOLEY

## REPORTER CERTIFICATE

I, Lisa M. Boschetti-Maurino, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a certified shorthand reporter and a disinterested person, and thereafter transcribed into typewriting.

Pursuant to Federal Rule 30(e), transcript review was requested.

I further certify that I have no interest in the outcome of this action. And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand  
this 3rd day of April 2020.

\_\_\_\_\_/s/Lisa M. Boschetti-Maurino\_\_\_\_\_  
Certified Shorthand Reporter  
State of California, CSR#9389